

## JUDGE MICHAEL'S POLICY REGARDING PROPER SERVICE ON CORPORATIONS AND BANKS

As you probably have noticed, we are taking a much closer look at pleadings to ensure that notice has been given as required by Bankruptcy Rule 7004<sup>1</sup> regarding proper service on corporations and insured depository institutions in contested matters. Rule 9014 states that all contested matters must be served in the manner provided for service of a summons and complaint by Rule 7004. In such an instance, proper service can be made

[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint *to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process* and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Rule 7004(b)(3) (emphasis added). The mere listing of the corporate entity, followed by an address, is not enough. You actually have to list a human being (or at least a title held by a human being) in order to pass muster. The most common place we see this come up is when a debtor files a motion to avoid a lien.

In order for the Court to verify compliance with Rule 7004 (b)(3), when filing certificates of service upon a corporate entity for motions in Judge Michael's cases, you have to identify the recipient as an officer, managing or general agent, or registered agent of the corporation. In other words, tell us who you served, where you served them, and why they are the right person to serve. For example, the address used for notice to a corporation through a registered agent should look like this:

[Name of Corporation to be served]  
Attn: [Name of Registered Agent],  
Registered Agent of [Name of Corporation to be served]  
[Address of Registered Agent]

If you follow this format, you make our job easy. The less time we have to spend reviewing motions and writing orders denying them for procedural reasons, the more time we have to do things like try cases and write opinions. Remember, the motion you file is no better than the notice which you give. If the affected entity does not get proper notice, the order granting the relief you sought is more suspect than the Nebraska Cornhuskers' passing game (for those of you who don't follow football, believe me, that is suspect).

The problem can be even more perplexing if you are dealing with an insured depository institution (i.e., a bank). Under Bankruptcy Rule 7004(h), service on a bank must be made *by certified mail (YES, THAT'S RIGHT, CERTIFIED MAIL) addressed to an officer of the*

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<sup>1</sup> All references to Rules refer to FED. R. BANKR. P. (West 2004).

*institution* unless one of the three conditions of Rule 7004(h) have been met.<sup>2</sup> As always, your certificate of service should indicate what type of service was made upon each party.

When service is made on an attorney under Rule 7004(h)(1), they should be identified as “Attorney for [Name of Insured Depository Institution].” Note that the attorney must have appeared for the institution *in the bankruptcy proceeding*. The fact that the institution was represented in a state court matter (last week, last month, or last year) by an attorney is not sufficient to make them an agent of the institution for the purposes of a subsequent bankruptcy case. We have to know, through a review of our court file, that the attorney represents that financial institution. Until such time as the institution appears *in the bankruptcy case* by its attorney, or one of the other conditions of Rule 7004(h) are met, you should serve an officer of the institution by certified mail as required by 7004(h).

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<sup>2</sup> Those exceptions are:

1. The institution has appeared in the case by an attorney;
2. You get a court order allowing you to serve by first class mail after you serve, **by certified mail**, an application on the financial institution seeking permission to serve them by first class mail (think about that one); or
3. The institution has waived its right to certified mail service by “designating an officer to receive service.”

Please be aware that several courts, including our bankruptcy appellate panel, have held that the designation of a name and address as to where notices should be sent on a proof of claim operates as a waiver of the right to certified mail service. *See Green Tree Fin. Serv. Corp. v. Karbel (In re Karbel)*, 220 B.R. 108, 112 (10th Cir. BAP 1998); *see also Fleet Credit Card Servs., L.P. v. Tudor (In re Tudor)*, 282 B.R. 546, 550 (Bankr. S.D. Ga. 2002); *Ms. Interpret v. Rawe Druck-und-Veredlungs-GmbH (In re Ms. Interpret)*, 222 B.R. 409, 415 (Bankr. S.D.N.Y. 1998).